



Senate

General Assembly

File No. 613

February Session, 2018

Substitute Senate Bill No. 484

Senate, April 19, 2018

The Committee on Judiciary reported through SEN. DOYLE of the 9th Dist. and SEN. KISSEL of the 7th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING GRAND JURY REFORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-47b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 For the purposes of sections 54-47a to 54-47h, inclusive, as amended
4 by this act, unless the context otherwise requires:

5 (1) "Applicant" means any judge of the Superior Court, Appellate
6 Court or Supreme Court, the Chief State's Attorney or a state's attorney
7 who makes an application to a panel of judges for an investigation into
8 the commission of a crime or crimes.

9 (2) "Crime or crimes" means (A) any crime or crimes involving
10 corruption in the executive, legislative or judicial branch of state
11 government or in the government of any political subdivision of the
12 state, (B) fraud by a vendor of goods or services in the medical

13 assistance program under Title XIX of the Social Security Act
14 Amendments of 1965, as amended, (C) any violation of chapter 949c,
15 (D) any violation of the election laws of the state, (E) any felony
16 involving the unlawful use or threatened use of physical force or
17 violence committed with the intent to intimidate or coerce the civilian
18 population or a unit of government, and (F) any other class A, B or C
19 felony or any unclassified felony punishable by a term of
20 imprisonment in excess of five years [for which] that the Chief State's
21 Attorney or state's attorney demonstrates that he or she has no other
22 means of obtaining sufficient information as to whether a crime has
23 been committed or the identity of the person or persons who may have
24 committed a crime.

25 (3) "Investigatory grand jury" means a judge, constitutional state
26 referee or any three judges of the Superior Court, other than a judge
27 designated by the Chief Justice to serve on the panel, appointed by the
28 Chief Court Administrator to conduct an investigation into the
29 commission of a crime or crimes.

30 (4) "Panel of judges" or "panel" means a panel of three Superior
31 Court judges designated by the Chief Justice of the Supreme Court
32 from time to time to receive applications for investigations into the
33 commission of crimes in accordance with the provisions of sections 54-
34 47a to 54-47h, inclusive, as amended by this act, one of whom may be
35 the Chief Court Administrator.

36 (5) "Target of the investigation" or "target" means a person who is
37 reasonably suspected of committing a crime or crimes within the scope
38 of the investigation.

39 Sec. 2. Section 54-47c of the general statutes is repealed and the
40 following is substituted in lieu thereof (*Effective October 1, 2018*):

41 (a) Any judge of the Superior Court, Appellate Court or Supreme
42 Court, the Chief State's Attorney or a state's attorney may make
43 application to a panel of judges for an investigation into the
44 commission of a crime or crimes whenever such applicant has

45 reasonable belief that the administration of justice requires an
46 investigation to determine whether or not there is probable cause to
47 believe that a crime or crimes have been committed.

48 (b) [Each] Except as provided in section 3 of this act, each
49 application for an investigation into the commission of a crime or
50 crimes shall be made in writing upon oath or affirmation to a panel of
51 judges and in accordance with this subsection and subsection (c) of this
52 section. Each application shall include the following information: (1)
53 The identity of the applicant and [his] the applicant's authority to
54 make such application; (2) a full and complete statement of the facts
55 and circumstances relied upon by the applicant to justify [his] the
56 applicant's reasonable belief that the investigation will lead to a
57 finding of probable cause that a crime or crimes have been committed;
58 and (3) a full and complete statement of the facts concerning all
59 previous applications known to the applicant, made to any panel of
60 judges, for investigation of any one or more of the same criminal
61 offenses involving any of the same persons specified in the application,
62 including the action taken by the panel on each such application. The
63 panel of judges may require such additional testimony or
64 documentary evidence in support of facts in the application as it
65 deems necessary. Such additional testimony shall be transcribed.

66 (c) If the application is made by the Chief State's Attorney or a
67 state's attorney, it shall also include (1) a full and complete statement
68 of the status of the investigation and of the evidence collected as of the
69 date of such application, (2) if other normal investigative procedures
70 have been tried with respect to the alleged crime, a full and complete
71 statement specifying the other normal investigative procedures that
72 have been tried and the reasons such procedures have failed or the
73 specific nature of the alleged crime or the nature of the investigation
74 that leads the applicant to reasonably conclude that the use of normal
75 investigative procedures would not result in the obtaining of
76 information that would advance the investigation or would fail to
77 secure and preserve evidence or testimony that might otherwise be
78 compromised, (3) if other normal investigative procedures have not

79 been tried, a full and complete statement of the reasons such
80 procedures reasonably appear to be unlikely to succeed if tried or be
81 too dangerous to employ, and (4) a full and complete statement of the
82 reasons for the applicant's belief that the appointment of an
83 investigatory grand jury and the investigative procedures employed
84 by such investigatory grand jury will lead to a finding of probable
85 cause that a crime or crimes have been committed.

86 (d) The panel may, except as provided in section 3 of this act,
87 approve the application and order an investigation into the
88 commission of a crime or crimes if it finds that (1) the administration of
89 justice requires an investigation to determine whether or not there is
90 probable cause to believe that a crime or crimes have been committed,
91 (2) if the application was made by the Chief State's Attorney or a state's
92 attorney, other normal investigative procedures with respect to the
93 alleged crime have been tried and have failed or reasonably appear to
94 be unlikely to succeed if tried or be too dangerous to employ or, due to
95 the specific nature of the alleged crime or the nature of the
96 investigation, it is reasonable to conclude that the use of normal
97 investigative procedures would not result in the obtaining of
98 information that would advance the investigation or would fail to
99 secure and preserve evidence or testimony that might otherwise be
100 compromised, and (3) the investigative procedures employed by an
101 investigatory grand jury appear likely to succeed in determining
102 whether or not there is probable cause to believe that a crime or crimes
103 have been committed.

104 Sec. 3. (NEW) (*Effective October 1, 2018*) (a) For the purposes of this
105 section:

106 (1) "Crime or crimes" means (A) any crime or crimes involving: (i)
107 Corruption or abuse of official authority in the executive, legislative or
108 judicial branch of state government or in the government of any
109 political subdivision of the state, (ii) fraud by a vendor of goods or
110 services in the medical assistance program under Title XIX of the Social
111 Security Act Amendments of 1965, as amended, (iii) larceny in the first

112 degree by embezzlement, false pretenses, false promise, extortion or
113 defrauding of public community, (iv) the election laws of this state, or
114 (v) bribery under section 53a-147 of the general statutes or bribe
115 receiving under section 53a-148 of the general statutes, or (B) any
116 violation of section 53-395 of the general statutes that involves the
117 predicate crime of money laundering in the first degree pursuant to
118 section 53a-276 of the general statutes or trafficking in persons
119 pursuant to section 53a-192a of the general statutes;

120 (2) "Property" includes, but is not limited to, documents, books,
121 papers, records, films, recordings, electronic records and other tangible
122 things. "Property" does not include electronic devices, including, but
123 not limited to, computers, laptop computers, tablet devices and
124 cellular phones;

125 (3) "Abuse of official authority" means a crime involving the
126 intentional use by a public officer of such officer's office for the
127 purpose of obtaining personal financial gain; and

128 (4) "Panel of judges" or "panel" means a panel of three Superior
129 Court judges designated by the Chief Justice of the Supreme Court
130 from time to time to receive applications for investigations into the
131 commission of crimes in accordance with this section, one of whom
132 may be the Chief Court Administrator.

133 (b) (1) The Chief State's Attorney, or a state's attorney designated by
134 the Chief State's Attorney, may make application pursuant to this
135 section in writing and under oath or affirmation to a panel of judges
136 for an investigation into the commission of a crime or crimes, for the
137 sole purpose of seeking permission to subpoena only property.

138 (2) Each application made pursuant to this section shall include: (A)
139 The identity of the applicant and such applicant's authority to make
140 such application; (B) the reasons for the applicant's reasonable belief
141 that a crime or crimes have been committed; and (C) a statement that
142 the administration of justice requires an investigation to determine
143 whether or not there is probable cause to believe that a crime or crimes

144 have been committed.

145 (3) The panel may approve the application and order an
146 investigation into the commission of a crime or crimes if it finds that
147 the administration of justice requires an investigation to determine
148 whether or not there is probable cause to believe that a crime or crimes
149 have been committed.

150 (4) If the panel approves the application and orders an investigation
151 pursuant to subdivision (3) of this subsection, the grand jury
152 appointed under section 54-47d of the general statutes, as amended by
153 this act, may authorize the issuance of a subpoena under this section
154 upon finding that a reasonable belief exists that a crime or crimes have
155 been committed, that the property sought to be subpoenaed is material
156 to the investigation of such crime or crimes, and that the
157 administration of justice requires an investigation to determine
158 whether there is probable cause to believe that a crime or crimes have
159 been committed.

160 (5) Any subpoena issued pursuant to this section shall (A) compel
161 only the production of property material to the investigation being
162 conducted, (B) specify with reasonable particularity the property to be
163 produced, (C) allow a reasonable period of time for production, and
164 (D) require only the production of property covering a reasonable
165 period of time.

166 Sec. 4. Section 54-47d of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective October 1, 2018*):

168 (a) If the panel approves [the] an application and orders an
169 investigation pursuant to section 54-47c, as amended by this act, or
170 section 3 of this act, into the commission of a crime or crimes, as
171 defined in section 54-47b, as amended by this act, or section 3 of this
172 act, the Chief Court Administrator shall (1) appoint an investigatory
173 grand jury to conduct the investigation, and (2) designate the court
174 location in the judicial district where any motions to quash and any
175 contempt proceedings shall be heard and any findings and records of

176 the investigation shall be filed.

177 (b) [Each] Except as provided in subsection (c) of this section, each
178 order authorizing the investigation pursuant to section 54-47c, as
179 amended by this act, into the commission of a crime or crimes, as
180 defined in section 54-47b, as amended by this act, by the panel shall
181 specify: (1) The date of issuance of the order, (2) the period of time
182 within which the investigation is to be conducted, provided in no
183 event shall the investigation be longer than [six] nine months from the
184 date the Chief Court Administrator appoints the investigatory grand
185 jury to conduct the investigation, unless an application for an
186 extension of time is filed and granted pursuant to subsection [(c)] (d) of
187 this section, (3) the scope of the investigation, and (4) the panel's
188 reasons for finding that (A) the administration of justice requires an
189 investigation to determine whether or not there is probable cause to
190 believe that a crime or crimes have been committed, (B) if the
191 application was made by the Chief State's Attorney or a state's
192 attorney, other normal investigative procedures with respect to the
193 alleged crime have been tried and have failed or reasonably appear to
194 be unlikely to succeed if tried or be too dangerous to employ, or, due
195 to the specific nature of the alleged crime or the nature of the
196 investigation, it is reasonable to conclude that the use of normal
197 investigative procedures would not result in the obtaining of
198 information that would advance the investigation or would fail to
199 secure and preserve evidence or testimony that might otherwise be
200 compromised, and (C) the investigative procedures employed by the
201 investigatory grand jury appear likely to succeed in determining
202 whether or not there is probable cause to believe that a crime or crimes
203 have been committed. The panel shall retain a copy of the order and
204 the original application and shall transmit to the investigatory grand
205 jury, appointed pursuant to subsection (a) of this section, the original
206 order and a copy of the application filed with the panel.

207 (c) Each order authorizing the investigation into the commission of
208 a crime or crimes, as defined in section 3 of this act, by the panel after
209 an application is made pursuant to section 3 of this act, shall specify:

210 (1) The date of issuance of the order, (2) the period of time within
211 which the investigation is to be conducted, provided in no event shall
212 the investigation be longer than nine months from the date the Chief
213 Court Administrator appoints the investigatory grand jury to conduct
214 the investigation, unless an application for an extension of time is filed
215 and granted pursuant to subsection (d) of this section, (3) the scope of
216 the investigation, (4) the panel's reasons for finding that a reasonable
217 belief exists that a crime or crimes, as defined in section 3 of this act,
218 have been committed, (5) that the property sought to be subpoenaed is
219 material to the investigation of such crime or crimes, and (6) that the
220 administration of justice requires an investigation to determine
221 whether or not there is probable cause to believe that a crime or crimes
222 have been committed. For the purposes of this subsection, "property"
223 has the same meaning as provided in section 3 of this act.

224 [(c)] (d) The investigatory grand jury may make an application to
225 the panel of judges for an extension of time within which to conduct
226 [its] the investigation or for an amendment to the scope of its
227 investigation. The application for extension or amendment shall set
228 forth the reasons for the necessity of such extension or amendment. No
229 more than two extensions or amendments of an order may be granted
230 by the issuing panel. The period of any extension shall be no longer
231 than the panel deems necessary to achieve the purposes for which [it]
232 the extension was granted and in no event shall any extension be for a
233 period longer than six months.

234 Sec. 5. Section 54-47f of the general statutes is repealed and the
235 following is substituted in lieu thereof (*Effective October 1, 2018*):

236 (a) The investigatory grand jury, in conducting the investigation,
237 may (1) seek the assistance of the Chief State's Attorney or state's
238 attorney who filed the application, or [his] or her designee, (2) appoint
239 an attorney to provide assistance if a judge of the Superior Court,
240 Appellate Court or Supreme Court filed the application, or (3) appoint
241 any other attorney to provide assistance when necessary in the interest
242 of justice.

243 (b) The attendance of witnesses summoned to appear and give
244 testimony and the production of documents or other tangible evidence,
245 pursuant to section 54-47c, as amended by this act, or property,
246 pursuant to section 3 of this act, at such investigation may be
247 compelled by subpoena, signed by any official authorized to issue such
248 process. Any subpoena issued shall be served at least seventy-two
249 hours before the date of appearance of a witness or production of
250 documents or other tangible evidence or property, not including
251 Saturdays, Sundays or legal holidays, unless controlling federal and
252 state law provides otherwise and contain a notice advising the person
253 summoned (1) whether such person is a target of the investigation, (2)
254 that such person has the right to have counsel present when such
255 person is being examined by the investigatory grand jury and to
256 consult with such counsel, (3) that if such person is indigent, such
257 person has the right to have counsel appointed to represent such
258 person, and (4) that such person has the right not to be compelled to be
259 a witness, or give evidence, against himself or herself.

260 (c) No person summoned to appear and give testimony or produce
261 documents or other tangible evidence or property shall be required to
262 testify or shall be required to produce documents or other tangible
263 evidence or property if the presiding judge or judge of the court of the
264 judicial district designated by the Chief Court Administrator pursuant
265 to subsection (a) of section 54-47d, as amended by this act, to whom a
266 motion to quash is assigned for a hearing determines (1) compliance
267 with the subpoena by such person would be unduly burdensome or
268 oppressive, (2) the primary purpose of the issuance of the subpoena is
269 to harass the person subpoenaed, (3) such person has already been
270 punished pursuant to subsection (e) of this section for such person's
271 refusal to testify or produce such documents or other tangible evidence
272 or property before any investigatory grand jury related to the same
273 crime or crimes, or (4) such person has not been advised of such
274 person's rights under this section.

275 (d) Any person summoned to appear and give testimony or produce
276 documents or other tangible evidence or property to the grand jury

277 shall have the right to counsel before the investigatory grand jury. The
278 court of the judicial district designated by the Chief Court
279 Administrator pursuant to subsection (a) of section 54-47d, as
280 amended by this act, shall appoint counsel pursuant to subsection (d)
281 of section 51-296, as amended by this act, to represent such person
282 before the investigatory grand jury if the court determines, after
283 investigation by the public defender or the office of public defender,
284 that the person summoned is indigent, as defined in chapter 887. The
285 cost for such counsel shall be established by, and paid from, funds
286 appropriated to the Division of Public Defender Services for the
287 purpose of providing such counsel.

288 [(c)] (e) If any [witness] persons properly summoned fails to appear
289 or to produce any documents included in the subpoena, or if [he] such
290 person fails to answer any proper question, the investigatory grand
291 jury conducting the investigation may report the matter to the state's
292 attorney for the judicial district which has been designated [in] under
293 subsection (a) of section 54-47d, as amended by this act, unless such
294 state's attorney is the applicant or has been appointed to assist in such
295 investigation, in which case the investigatory grand jury shall report
296 the matter to the Chief State's Attorney, and such state's attorney or
297 Chief State's Attorney, as the case may be, may file a complaint setting
298 forth the facts at any criminal session of the superior court in such
299 judicial district. The court shall thereupon issue a citation to the
300 [witness] person to appear before the court and show cause why [he]
301 the person should not be punished as for a contempt, and if, after
302 hearing, the court finds that [he] such person failed to appear without
303 due cause or failed to produce any document properly to be presented
304 to the investigatory grand jury or failed to answer any proper question
305 in the course of the investigation, it may punish [him] such person as it
306 might a witness failing to appear, to produce a document properly to
307 be considered or to answer a proper question before the court.

308 [(d)] (f) Witnesses may be examined by the investigatory grand jury
309 conducting the investigation or by any attorney or attorneys appointed
310 by such investigatory grand jury for such purpose. At the hearing, the

311 official conducting the investigation shall inform the witness that [he]
312 such witness has the right to have counsel present in the investigatory
313 grand jury room with him or her and the right to leave the
314 investigatory grand jury room to consult with such counsel.

315 [(e)] (g) (1) The official conducting the investigation shall inform
316 [any witness] a person who is a target of the investigation that [he]
317 such person is a target and shall advise [him] such person that he or
318 she has the right under the Constitution of the United States and the
319 Constitution of Connecticut not to be compelled to be a witness, or to
320 give evidence, against himself or herself. Neither the Chief State's
321 Attorney or a state's attorney may summon before an investigatory
322 grand jury a person who is a target who has stated through such
323 person's counsel that such person intends to invoke such person's
324 privilege against self-incrimination.

325 (2) A person who is a target may testify before the investigatory
326 grand jury. The attorney or attorneys conducting the investigation
327 shall notify such person of such person's right to testify, unless
328 notification may result in such person's flight, endanger other persons
329 or obstruct justice or unless such attorney or attorneys are unable to
330 notify the person after exercising reasonable diligence.

331 [(f)] (h) Any attorney appointed to assist in conducting the
332 investigation shall disclose to the investigatory grand jury any
333 exculpatory information or material in [his] such attorney's possession,
334 custody or control concerning any person who is a target of the
335 investigation.

336 [(g)] (i) An official stenographer of the Superior Court or [his] such
337 stenographer's assistant shall record any testimony taken at the
338 investigation.

339 (j) For the purposes of this section, "property" has the same meaning
340 as provided in section 3 of this act.

341 Sec. 6. (NEW) (*Effective October 1, 2018*) (a) Whenever a subpoena

342 has been issued pursuant to section 54-47c of the general statutes, as
343 amended by this act, or section 3 of this act, to compel testimony or the
344 production of documents or other tangible evidence or property, the
345 person summoned may file a motion to quash the subpoena in
346 accordance with law and the rules of the court. No fees or costs may be
347 assessed.

348 (b) If any subpoena is issued pursuant to section 54-47c of the
349 general statutes, as amended by this act, or section 3 of this act for the
350 production of records of a natural person, the subpoena shall comply
351 with controlling federal or state law regarding notice and any person
352 aggrieved by the issuance of such subpoena shall have standing to file
353 a motion to quash in accordance with law and the rules of the court.
354 No fees or costs may be assessed.

355 (c) A judge may quash or modify any subpoena issued pursuant to
356 section 54-47c of the general statutes, as amended by this act, or section
357 3 of this act for reasons provided in subdivisions (1) to (4), inclusive, of
358 subsection (c) of section 54-47f of the general statutes, as amended by
359 this act, or in recognition of any privilege established under law, or for
360 just cause.

361 (d) For the purposes of this section, "property" has the same
362 meaning as provided in section 3 of this act.

363 Sec. 7. Section 54-47g of the general statutes is repealed and the
364 following is substituted in lieu thereof (*Effective October 1, 2018*):

365 (a) [Within] Not later than sixty days [of] after the conclusion of the
366 investigation, the investigatory grand jury conducting such
367 investigation shall file its finding with the court of the judicial district
368 designated by the Chief Court Administrator pursuant to subsection
369 (a) of section 54-47d, as amended by this act, and shall file a copy of its
370 finding with the panel and with the Chief State's Attorney or a state's
371 attorney if such Chief State's Attorney or state's attorney made
372 application for the investigation. The stenographer shall file any record
373 of the investigation with the court of the judicial district designated by

374 the Chief Court Administrator pursuant to subsection (a) of section 54-
375 47d, as amended by this act, and the panel and the Chief State's
376 Attorney or a state's attorney, if such Chief State's Attorney or state's
377 attorney made application for the investigation, shall have access to
378 such record upon request made to the clerk of the court without a
379 hearing. Such finding shall state whether or not there is probable cause
380 to believe that a crime or crimes have been committed. Except as
381 otherwise provided in this section, any part of the record of the
382 investigation not disclosed with the finding pursuant to subsection (b)
383 of this section shall be sealed, [provided] except that any person may
384 file an application with the panel for disclosure of any such part of the
385 record. Upon receipt of such application, the panel shall, after notice,
386 hold a hearing and the panel, by a majority vote, may disclose any
387 such part of the record when such disclosure is deemed by the panel to
388 be in the public interest, except that no part of the record shall be
389 disclosed which contains allegations of the commission of a crime by
390 an individual if the investigatory grand jury failed to find probable
391 cause that such individual committed such crime unless such
392 individual requests the release of such part of the record. Any person
393 aggrieved by an order of the panel shall have the right to appeal such
394 order by filing a petition for review with the Appellate Court [within]
395 not later than seventy-two hours [from] after the issuance of such
396 order.

397 (b) The finding of the investigation shall be open to public
398 inspection and copying at the court where it has been filed seven
399 calendar days after it has been filed, unless within that period the
400 Chief State's Attorney or a state's attorney with whom the finding was
401 filed files a motion with the investigatory grand jury requesting that a
402 part or all of such finding not be so disclosed. The finding may include
403 all or such part of the record as the investigatory grand jury may
404 determine, except that no part of the record shall be disclosed which
405 contains allegations of the commission of a crime by an individual if
406 the investigatory grand jury failed to find probable cause that such
407 individual committed such crime unless such individual requests the
408 release of such part of the record. In such event as much of the finding

409 as has not been sought to be withheld from disclosure shall be
410 disclosed promptly upon the expiration of said seven-calendar-day
411 period.

412 (c) [Within] Not later than fifteen calendar days [of] after the filing
413 of such motion, the investigatory grand jury shall conduct a hearing.
414 The investigatory grand jury shall give written notice of such hearing
415 to the person filing such motion and any other person the
416 investigatory grand jury deems to be an interested party to the
417 proceedings, which may include, but not be limited to, persons who
418 testified or were the subject of testimony before the investigatory
419 grand jury. [Within] Not later than five calendar days [of] after the
420 conclusion of the hearing, the investigatory grand jury shall render its
421 decision, and shall send copies thereof to all those to whom it gave
422 notice of the hearing. It shall deny any such motion unless it makes
423 specific findings of fact on the record that there is a substantial
424 probability that one of the following interests will be prejudiced by
425 publicity that nondisclosure would prevent, and that reasonable
426 alternatives to nondisclosure cannot adequately protect that interest:
427 (1) The right of a person to a fair trial; (2) the prevention of potential
428 defendants from fleeing; (3) the prevention of subornation of perjury
429 or tampering with witnesses; or (4) the protection of the lives and
430 reputations of innocent persons which would be significantly damaged
431 by the release of uncorroborated information. Any order of
432 nondisclosure shall be drawn to protect the interest so found.

433 (d) Any person aggrieved by an order of the investigatory grand
434 jury shall have the right to appeal such order by filing a petition for
435 review with the Appellate Court [within] not later than seventy-two
436 hours [from] after the issuance of such order.

437 (e) The Appellate Court shall provide an expedited hearing on such
438 petition in accordance with such rules as the judges of the Appellate
439 Court may adopt, consistent with the rights of the petitioner and the
440 parties.

441 (f) Notwithstanding the existence of an order of nondisclosure

442 under this section, any witness may apply in writing to the presiding
443 judge of the criminal session of the court of the judicial district wherein
444 the record of the investigation has been filed, or [his] such judge's
445 designee, for access to and a copy of the record of [his] the witness's
446 own testimony. Any witness shall be allowed access, at all reasonable
447 times, to the record of [his] the witness's own testimony and be
448 allowed to obtain a copy of such record unless [said] such judge or
449 [his] such judge's designee finds after a hearing and for good cause
450 shown that it is not in the best interest of justice to allow the witness to
451 have access to and a copy of the record of [his] the witness's testimony.

452 (g) Notwithstanding the existence of an order of nondisclosure
453 under this section, the presiding judge of the criminal session of the
454 court of the judicial district wherein the record of the investigation has
455 been filed, or [his] such judge's designee, shall grant any written
456 request of a person accused of a crime as a result of the investigation to
457 have access, at all reasonable times, to the record of [his] such person's
458 own testimony and to obtain a copy of such record.

459 Sec. 8. Section 54-47h of the general statutes is repealed and the
460 following is substituted in lieu thereof (*Effective October 1, 2018*):

461 In January of each year, the panel of judges appointed pursuant to
462 section 54-47b, as amended by this act, shall report to the Chief Court
463 Administrator, who shall in turn report to the Chief Justice, Governor
464 and General Assembly, in accordance with the provisions of section
465 11-4a, the following information (1) with respect to applications made
466 pursuant to subsections (b) and (c) of section 54-47c, as amended by
467 this act, during the preceding calendar year: [(1)] (A) The number of
468 applications for an investigation into the commission of a crime or
469 crimes filed with the panel and the judicial district each such
470 application was filed in; [(2)] (B) the number of applications approved
471 by the panel; and [(3)] (C) the number of applications approved for
472 extensions of time or amendments to the order; and (2) with respect to
473 applications made pursuant to section 3 of this act during the
474 preceding calendar year: (A) The number of applications made for an

475 investigation into the commission of a crime or crimes filed with the
476 panel and the judicial district each such application was filed in; (B) the
477 number of applications approved by the panel; and (C) the number of
478 applications approved for extensions of time or amendments to an
479 order issuing a subpoena.

480 Sec. 9. Section 51-296 of the general statutes is repealed and the
481 following is substituted in lieu thereof (*Effective October 1, 2018*):

482 (a) In any criminal action, in any habeas corpus proceeding arising
483 from a criminal matter, in any extradition proceeding, or in any
484 delinquency matter, the court before which the matter is pending shall,
485 if it determines after investigation by the public defender or his office
486 that a defendant is indigent as defined under this chapter, designate a
487 public defender, assistant public defender or deputy assistant public
488 defender to represent such indigent defendant, unless, in a
489 misdemeanor case, at the time of the application for appointment of
490 counsel, the court decides to dispose of the pending charge without
491 subjecting the defendant to a sentence involving immediate
492 incarceration or a suspended sentence of incarceration with a period of
493 probation or the court believes that the disposition of the pending case
494 at a later date will not result in a sentence involving immediate
495 incarceration or a suspended sentence of incarceration with a period of
496 probation and makes a statement to that effect on the record. If it
497 appears to the court at a later date that, if convicted, the sentence of an
498 indigent defendant for whom counsel has not been appointed will
499 involve immediate incarceration or a suspended sentence of
500 incarceration with a period of probation, counsel shall be appointed
501 prior to trial or the entry of a plea of guilty or nolo contendere.

502 (b) In the case of codefendants, the court may appoint one or more
503 public defenders, assistant public defenders or deputy assistant public
504 defenders to represent such defendants or may appoint counsel from
505 the trial list established under section 51-291.

506 (c) (1) The division shall provide, pursuant to section 51-296a: (A)
507 Legal services and guardians ad litem to children, youths and indigent

508 respondents in family relations matters in which the state has been
509 ordered to pay the cost of such legal services and guardians ad litem,
510 provided legal services shall be provided to indigent respondents
511 pursuant to this subparagraph only in paternity proceedings and
512 contempt proceedings; and (B) legal services and guardians ad litem to
513 children, youths and indigent legal parties in proceedings before the
514 superior court for juvenile matters. To carry out the requirements of
515 this subsection, the office of Chief Public Defender may contract with
516 (i) appropriate not-for-profit legal services agencies, (ii) individual
517 lawyers or law firms for the delivery of legal services to represent
518 children and indigent legal parties in such proceedings, and (iii)
519 mental health professionals as guardians ad litem in family relations
520 matters. Any contract entered into pursuant to this subsection may
521 include terms encouraging or requiring the use of a multidisciplinary
522 agency model of legal representation.

523 (2) The division shall establish a system to ensure that attorneys
524 providing legal services pursuant to this subsection are assigned to
525 cases in a manner that will avoid conflicts of interest, as defined by the
526 Rules of Professional Conduct.

527 (3) The division shall establish training, practice and caseload
528 standards for the representation of children, youths, indigent
529 respondents and indigent legal parties pursuant to subdivision (1) of
530 this subsection. Such standards shall apply to each attorney who
531 represents children, youths, indigent respondents or indigent legal
532 parties pursuant to this subsection and shall be designed to ensure a
533 high quality of legal representation. The training standards for
534 attorneys required by this subdivision shall be designed to ensure
535 proficiency in the procedural and substantive law related to such
536 matters and to establish a minimum level of proficiency in relevant
537 subject areas, including, but not limited to, family violence, child
538 development, behavioral health, educational disabilities and cultural
539 competence.

540 (d) In a grand jury proceeding pursuant to sections 54-47a to 54-47h,

541 inclusive, as amended by this act, and sections 3 and 6 of this act, the
 542 court of the judicial district designated by the Chief Court
 543 Administrator pursuant to subsection (a) of section 54-47d, as
 544 amended by this act, shall, if the Chief Public Defender or the office of
 545 Chief Public Defender determines after investigation that the person
 546 summoned to the grand jury is indigent, as defined under this chapter,
 547 designate a public defender, assistant public defender or deputy
 548 assistant public defender to represent such indigent person.

549 [(d)] (e) Prior to the appearance in court in any matter specified in
 550 this section by a defendant, child, youth, respondent, person
 551 summoned to a grand jury proceeding or legal party, a public
 552 defender, assistant public defender, deputy assistant public defender
 553 or Division of Public Defender Services assigned counsel, upon a
 554 determination that the defendant, child, youth, respondent or legal
 555 party is indigent pursuant to subsection (a) of section 51-297, shall be
 556 authorized to represent the defendant, child, youth, respondent,
 557 person summoned to a grand jury proceeding or legal party until the
 558 court appoints counsel for such defendant, child, youth, respondent or
 559 legal party.

| | | |
|---|-----------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2018 | 54-47b |
| Sec. 2 | October 1, 2018 | 54-47c |
| Sec. 3 | October 1, 2018 | New section |
| Sec. 4 | October 1, 2018 | 54-47d |
| Sec. 5 | October 1, 2018 | 54-47f |
| Sec. 6 | October 1, 2018 | New section |
| Sec. 7 | October 1, 2018 | 54-47g |
| Sec. 8 | October 1, 2018 | 54-47h |
| Sec. 9 | October 1, 2018 | 51-296 |

JUD Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes a procedural change to the grand jury process in certain situations and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 484*****AN ACT CONCERNING GRAND JURY REFORM.*****SUMMARY**

Existing law permits judges and state's attorneys to apply to a panel of judges for a grand jury investigation into whether there is probable cause to believe that certain crimes were committed. This bill additionally permits the chief state's attorney, or a state's attorney he designates, to apply for a grand jury investigation into the commission of certain crimes for the sole purpose of seeking permission to subpoena certain property. The state's attorney may apply for such an investigation if (1) he or she has a reasonable belief that one or more of certain crimes the bill specifies has been committed and (2) the administration of justice requires an investigation to determine whether there is probable cause to believe so.

For the state's attorney's application for an investigation to subpoena property only, the bill establishes (1) the information that must be included in the application, (2) what an order authorizing such an investigation must specify, (3) the standard for issuing the subpoena, and (4) the scope of any such subpoena which, within a statutory timeframe, must provide specific notice to the person summoned to testify.

The bill also imposes certain notice requirements for witnesses summoned before a grand jury and prohibits the state's attorney from summoning someone who intends to invoke his or her Constitutional privilege against self-incrimination. It also permits anyone who receives a subpoena from a grand jury to file a motion with the court to quash the subpoena.

The bill additionally gives a person summoned before a grand jury

the right to (1) know if he or she is a target of the investigation, (2) counsel, and (3) not be compelled to testify.

The bill adds to the information required in the annual report to the chief court administrator prepared by the panel of judges who review grand jury applications. Under the bill, the reports must additionally include (1) the judicial district in which each application for an investigation to determine probable cause was filed and (2) data on applications for investigations to subpoena only property.

The bill also makes technical and conforming changes (§§ 2 and 7).

EFFECTIVE DATE: October 1, 2018

§§ 3-4 — INVESTIGATION TO SUBPOENA CERTAIN PROPERTY

The bill allows the chief state's attorney, or a state's attorney he designates, to apply in writing and under oath or affirmation to a panel of judges ("panel") for an investigation into the commission of certain crimes for the sole purpose of seeking permission to subpoena certain property. (The panel consists of three Superior Court judges designated by the Supreme Court Chief Justice, one of whom may be the chief court administrator.)

Generally, the law requires grand jury investigation applications to include certain specific statements such as (1) the status of the investigation and evidence collected to date and (2) if other investigatory procedures were not tried, the reasons they are unlikely to succeed or are too dangerous to use. The bill does not require such statements in applications for the more limited investigations.

Property Defined

Under the bill, "property" includes documents, books, papers, records, films, recordings, electronic records, and other tangible things. It does not include electronic devices, such as computers, tablet devices, and cellular phones.

Scope of the Investigation to Subpoena Property Only

The crimes for which a state's attorney may apply for a grand jury investigation to subpoena only property is limited to the following crimes:

1. state and local government corruption or abuse of official authority;
2. Medicaid vendor fraud;
3. 1st degree larceny by embezzlement, false pretenses, false promise, extortion, or defrauding of a public community;
4. election law violations;
5. bribery or bribe receiving;
6. racketeering crime involving 1st degree money laundering; or
7. trafficking in persons.

Under the bill, "abuse of official authority" means a crime involving a public officer's intentional use of his or her office to obtain personal financial gain.

In addition to applying for investigations into probable cause of the above crimes, existing law, unchanged by the bill, permits judges and state's attorneys to apply for grand jury investigations into probable cause of other racketeering offenses and organized crime, certain terrorism-related crimes, and any class A, B, and C felonies punishable by more than five years imprisonment for which the prosecutor can show that he or she has no other means of obtaining (1) sufficient information to determine whether a crime has been committed or (2) the perpetrator's identity.

Application for Investigation to Subpoena Certain Property

The application must include:

1. the applicant's identity and authority to make the application;

2. why the applicant has a reasonable belief that a crime has been committed; and
3. a statement that the administration of justice requires an investigation to determine whether there is probable cause to believe a crime has been committed.

Panel Approval of Investigation

The bill allows the panel to approve the application and order an investigation if it finds that the administration of justice requires an investigation to determine whether there is probable cause to believe a crime has been committed.

Order Authorizing the Investigation. Under the bill, each order the panel authorizes to investigate the commission of a crime solely to subpoena property, must specify:

1. the date of the order;
2. the investigation's duration, which cannot be longer than nine months from the date the chief court administrator appoints the investigatory grand jury to conduct the investigation, unless an application for an extension of time is filed and granted (the bill extends, from six months to nine months, the maximum time period for other grand jury investigations under current law);
3. the scope of the investigation;
4. the panel's reasons for its reasonable belief that a crime has been committed;
5. that the property sought to be subpoenaed is material to the criminal investigation; and
6. that the administration of justice requires an investigation to determine whether there is probable cause to believe a crime has been committed.

Standard for Issuing the Subpoena. If the panel approves the application and orders an investigation, the grand jury may authorize the issuance of a subpoena if it finds that:

1. there is a reasonable belief that a crime has been committed,
2. the property sought to be subpoenaed is material to the criminal investigation, and
3. the administration of justice requires an investigation to determine whether there is probable cause to believe a crime has been committed.

Scope of the Subpoena. If a subpoena is issued for an investigation into the commission of a crime solely to subpoena property, it must:

1. compel only the production of property material to the investigation being conducted,
2. specify with reasonable particularity the property to be produced,
3. allow a reasonable period of time for production, and
4. require only the production of property covering a reasonable period of time.

§§ 1, 5, & 6 — GRAND JURY SUBPOENA SERVICE AND INVESTIGATION TARGETS

Under existing law, witnesses may be compelled by subpoena to attend a grand jury investigation and to produce documents. The bill specifies that a witness for any grand jury investigation may be summoned to appear and give testimony and produce other tangible assets or, for the more limited investigations the bill permits, property.

The bill also imposes certain notice requirements for witnesses summoned before a grand jury and prohibits the state's attorney from summoning before a grand jury a person who intends to invoke his or

her Constitutional privilege against self-incrimination.

Service and Notice

Under the bill, any grand jury subpoena must be served at least 72 hours before the date of appearance of a witness or production of documents or other tangible evidence or property, not including Saturdays, Sundays or legal holidays, unless federal and state law provides otherwise.

The subpoena must contain a notice advising the person summoned:

1. whether he or she is a target of the investigation,
2. that he or she has the right to have counsel present when being examined by the investigatory grand jury and to consult with counsel,
3. that if he or she is indigent, he or she has the right to have counsel appointed, and
4. that he or she has the right not to be compelled to be a witness, or give evidence, against himself or herself.

Target of the Investigation

The bill prohibits the state's attorney from summoning before an investigatory grand jury a person who is a target who has stated through counsel that he or she intends to invoke his or her privilege against self-incrimination.

Under the bill, "target of the investigation" or "target" means a person reasonably suspected of committing a crime within the scope of the investigation.

The bill allows a person who is a target to testify before the investigatory grand jury. The attorney conducting the investigation must notify the person of his or her right to testify, unless (1) notification may result in the person's flight, endanger other persons,

or obstruct justice or (2) the attorney is unable to notify the person after exercising reasonable diligence.

§§ 5 & 6 — MOTION TO QUASH

General Provisions

Under the bill, if a grand jury issues a subpoena to compel testimony or the production of documents or other tangible evidence or property, the person summoned may move to quash the subpoena. The bill gives an individual aggrieved by the issuance of the subpoena standing to file a motion to quash and prohibits the court from assessing a fee or cost.

Court's Reasons to Quash or Modify

Under the bill, a person summoned to appear and give testimony or produce documents or other tangible evidence or property is not required to do so if the presiding judge or a judge designated by the chief court administrator to hear a motion to quash, determines:

1. compliance with the subpoena would be unduly burdensome or oppressive,
2. the primary purpose of issuing the subpoena is to harass the person subpoenaed,
3. the person has already been punished for his or her refusal to testify or produce the documents or other tangible evidence or property before an investigatory grand jury related to the same crime, or
4. the person has not been advised of his or her right to counsel and to not give evidence against himself or herself.

The bill also allows the court to quash a subpoena for good cause or in recognition of any privilege established by law.

§ 9 — APPOINTMENT OF COUNSEL

Under the bill, anyone summoned to appear and give testimony or

produce documents or other tangible evidence or property to a grand jury has the right to counsel. The bill requires the chief court administrator to appoint counsel to represent the person before the investigatory grand jury if the court determines that the person summoned is indigent. The court makes its determination based on an investigation done by the public defender's office.

The bill requires the official conducting the investigation to inform the witness the he or she has the right to have counsel present in the grand jury room and the right to leave the room to consult with counsel.

Under the bill, the court must appoint counsel if it determines that the person is indigent. The cost of appointing counsel must be established by, and paid from, funds appropriated to the Division of Public Defender Services for this purpose.

§ 8 — REPORTING

By law, the panel of judges charged with reviewing grand jury applications must report annually in January, through the chief court administrator, to the chief justice, governor, and General Assembly on the number of grand jury investigation applications received, applications approved, and extensions or amendments granted.

The bill requires the panel to include in its annual report (1) the judicial district in which each application was filed and (2) all such data elements on the applications for investigations to subpoena property only.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0 (04/02/2018)